

**U S Army Corps
of Engineers**
Huntington District

Public Notice

In reply refer to Public Notice No.

200400531-1

Issuance Date:

January 4, 2006

Stream:

UN Trib to Rockhouse Creek

Closing Date:

January 19, 2006

Please address all comments and inquiries to:

U.S. Army Corps of Engineers, Huntington District

ATTN: CELRH-OR-F Public Notice No. (*reference above*)

502 Eighth Street

Huntington, West Virginia 25701-2070

Phone: (304) 399-5710

PUBLIC NOTICE: The purpose of this public notice is to inform you of a proposal for work in which you might be interested. It is also to solicit your comments and information to better enable us to make a reasonable decision on factors affecting the public interest. We hope you will participate in this process.

REGULATORY PROGRAM: Since its early history, the U.S. Army Corps of Engineers (Corps) has played an important role in the development of the nation's water resources. Originally, this involved construction of harbor fortifications and coastal defenses. Later duties included the improvement of waterways to provide avenues of commerce. An important part of our mission today is the protection of the nation's waterways through the administration of the Corps Regulatory Program.

SECTION 10: The Corps is directed by Congress under Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403) to regulate all work or structures in or affecting the course, condition or capacity of navigable waters of the United States (U.S.). The intent of this law is to protect the navigable capacity of waters important to interstate commerce.

SECTION 404: The Corps is directed by Congress under Section 404 of the Clean Water Act (33 USC 1344) to regulate the discharge of dredged and fill material into all waters of the United States, including wetlands. The intent of the law is to protect the nation's waters from the indiscriminate discharge of material capable of causing pollution and to restore and maintain their chemical, physical and biological integrity.

TO WHOM IT MAY CONCERN: The following application has been submitted for a Department of the Army Permit under the provisions of Section 404 of the Clean Water Act. This notice serves as the Corps of Engineers' request to the West Virginia Department of Environmental Protection to act on Section 401 Water Quality Certification for the following application.

APPLICANT: Elk Run Coal Company, Inc.
PO Box 497
Sylvester, WV 25193

LOCATION: The proposed project is located on an unnamed tributary to Rockhouse Creek near Dorothy, Raleigh County, West Virginia as depicted on the attached Drawing 1. Drawing 2, labeled "Vicinity Map," shows another view of the general location area for the proposed mine. Rockhouse Creek flows into Clear Fork, which joins with Marsh Fork to form the Big Coal River, which along with the Little Coal River forms the Coal River, a navigable water of the United States.

DESCRIPTION OF THE PROPOSED WORK: This project was originally advertised under Public Notice (PN) 200400578 on October 7, 2004. This PN expired on November 8, 2004. Subsequent to the PN, the applicant has revised the proposal, which would increase the amount of impacts above those listed in PN 200400578.

The applicant proposes to place fill material into waters of the U.S. in conjunction with the construction of one valley fill and one road crossing at the White Bishop Deep Mine. The total impacts to waters of the United States would include 970 linear feet of temporary impacts. The project would disturb approximately 28.47 surface acres. The work would involve the use of a 60" diameter culvert placed in 970 linear feet of the stream to facilitate the creation of one valley fill and one road crossing in the unnamed tributary to Rockhouse Creek. The West Virginia Department of Environmental Protection (WVDEP) approved the applicant's mining application on July 30, 1997 (U-3002-94) pursuant to the Surface Mining Control and Reclamation Act of 1977. The proposed mining operation would mine the Powellton coal seam.

The proposed project would temporarily (10 years) impact 970 linear feet of intermittent stream. These proposed fill would impact the stream with a watershed of approximately 168.69 acres above the downstream end of the proposed pond access road, the most downstream structure associated with this project. The proposed sediment pond would be located outside of waters of the U.S.

Plans for the proposed work are attached to this Notice.

ALTERNATIVE ANALYSIS: This project is not considered to be water dependent; therefore, the applicant will be required to show that other less damaging practicable alternatives are not available that would achieve the applicant's goal. No permit will be issued until our review of the alternative analysis clearly shows that upland alternatives are not available to achieve the applicant's goal. The applicant has submitted the required alternatives analysis and it is currently being reviewed by this office.

MITIGATION PLAN: To compensate for stream impacts, the applicant proposes to mitigate on-site through in-kind restoration of aquatic resources. The on-site mitigation would involve the restoration and re-establishment of an enhanced stream bed of the unnamed tributary to Rockhouse Creek proposed to be impacted by this project. The stream restoration and enhancement plan would use Rosgen-type and other natural stream restoration techniques, including the use of log/pole and boulder placement for establishment of riffles, pools, and aquatic habitat. A 50-foot vegetated riparian zone (25 feet on each bank) would be established along the proposed mitigation site.

WATER QUALITY CERTIFICATION: Section 401 Water Quality Certification is required for this project. It is the applicant's responsibility to obtain certification from the West Virginia

Department of Environmental Protection.

HISTORIC AND CULTURAL RESOURCES: The National Register of Historic Places has been consulted and it has been determined there are no properties currently listed on the register that are in the area affected by the project. This office previously coordinated with the WV Division of Culture and History (WVDCH) during review for authorization under Nationwide Permit #21 concerning the originally proposed project advertised in PN 200400578. In response to PN 200400578, the WVDCH indicated "...no known historical, architectural, or archaeological sites listed in or eligible for inclusion in the National Register of Historic Places will be affected by this project." Based on a review of the new proposal, it is anticipated this determination would still apply. A copy of this public notice will be sent to the State Historic Preservation Office for their review. Comments concerning archeological sensitivity of a project area should be based upon collected data.

ENDANGERED/THREATENED SPECIES REVIEW: This project is located within the known or historic range of the following federally-listed species:

Virginia spiraea
Indiana Bat
Eastern Cougar

The Huntington District has determined this project is not likely to jeopardize the continued existence of any endangered or threatened species. Any habitat modifications affecting threatened and endangered species are authorized as part of the WVDEP's permitting process under SMCRA. The applicant has reduced proposed forested impacts to 15.65 acres to reduce the potential to impact Indiana bats. This notice will serve as coordination with the U. S. Fish and Wildlife Service regarding threatened or endangered species. This public notice serves as a request to the U.S. Fish and Wildlife Service for any additional information they may have on whether any listed or proposed to be listed endangered or threatened species may be present in the area which would be affected by the activity, pursuant to Section 7(c) of the Endangered Species Act of 1972 (as amended).

PUBLIC INTEREST REVIEW AND COMMENT: Any person who has an interest that may be adversely affected by the issuance of a permit may request a public hearing. The request must be submitted in writing to the District Engineer on or before the expiration date of this notice and must clearly set forth the interest which may be adversely affected and the manner in which the interest may be adversely affected by the activity. This application will be reviewed in accordance with 33 CFR 320.331, the Regulatory Program of the U. S. Army Corps of Engineers (USACE), and other pertinent laws, regulations, and executive orders. Our evaluation will also follow the guidelines published by the U. S. Environmental Protection Agency pursuant to Section 404(b) (1) of the CWA. Interested parties are invited to state any objections they may have to the proposed work. The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit that reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors that may be relevant to the proposal will be considered including the cumulative effects thereof; of those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic

properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership and, in general, the needs and welfare of the people. Written statements on these factors received in this office on or before the expiration date of this public notice will become a part of the record and will be considered in the final determination. A permit will be granted unless its issuance is found to be contrary to the public interest.


SOLICITATION OF COMMENTS: The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. For accuracy and completeness of the administrative record, all data in support of or in opposition to the proposed work should be submitted in writing setting forth sufficient detail to furnish a clear understanding of the reasons for support or opposition. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

CLOSE OF COMMENT PERIOD: All comments pertaining to this Public Notice must reach this office on or before the close of the comment period listed on page one of this Public Notice. If no comments are received by that date, it will be considered that there are no objections.

Comments and requests for additional information should be submitted to:

Mr. Jim Spence
North Regulatory Section, CELRH-OR-FN
U. S. Army Corps of Engineers Huntington District
502 Eighth Street
Huntington, West Virginia 25701-2070.

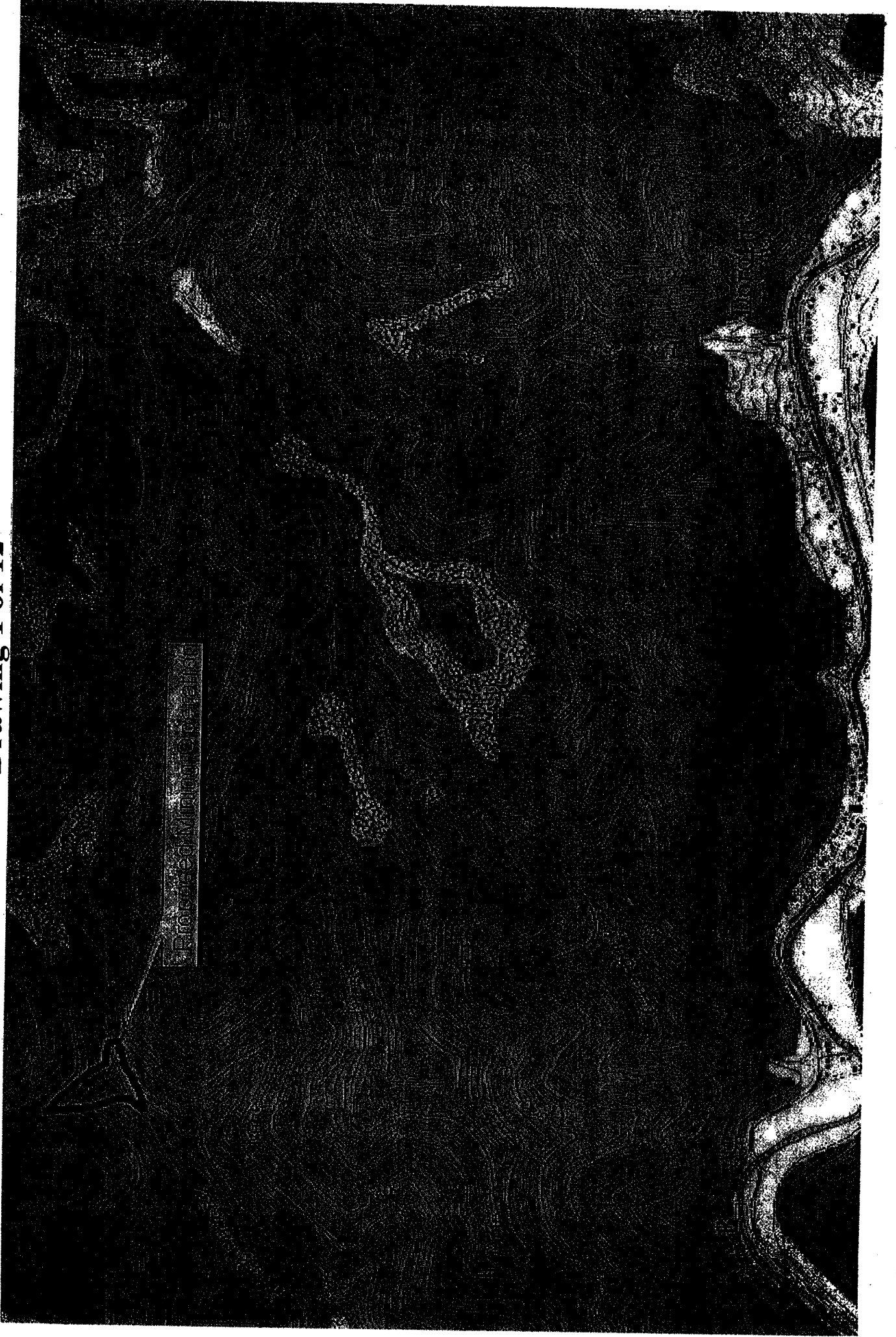
Please note names and addresses of those who submit comments in response to this public notice may be made publicly available. Thank you for your interest in our nation's water resources. If you have any questions concerning this public notice, please contact Mr. Jim Spence of the North Regulatory Section at 304-399-5210.


Ginger Mullins, Chief
Regulatory Branch

(W)

Drawing 1 of 12

Produced by the National Archives





LEGEND

PERMIT LIMITS

BENTHIC SITE

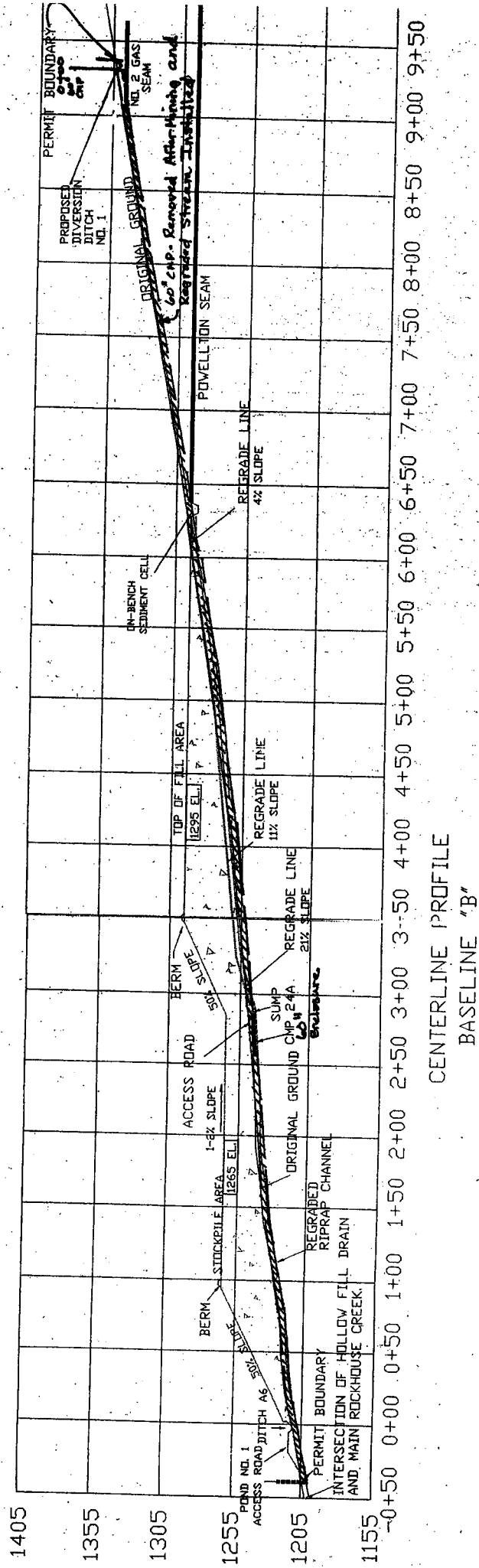
US UPSTREAM - BENTHIC SITE

DS DOWNSTREAM BENTHIC SITE

VICINITY MAP
IP. PERMIT APPLICATION
ELK RUN COAL COMPANY, INC.
U-3002-94/WV1014765

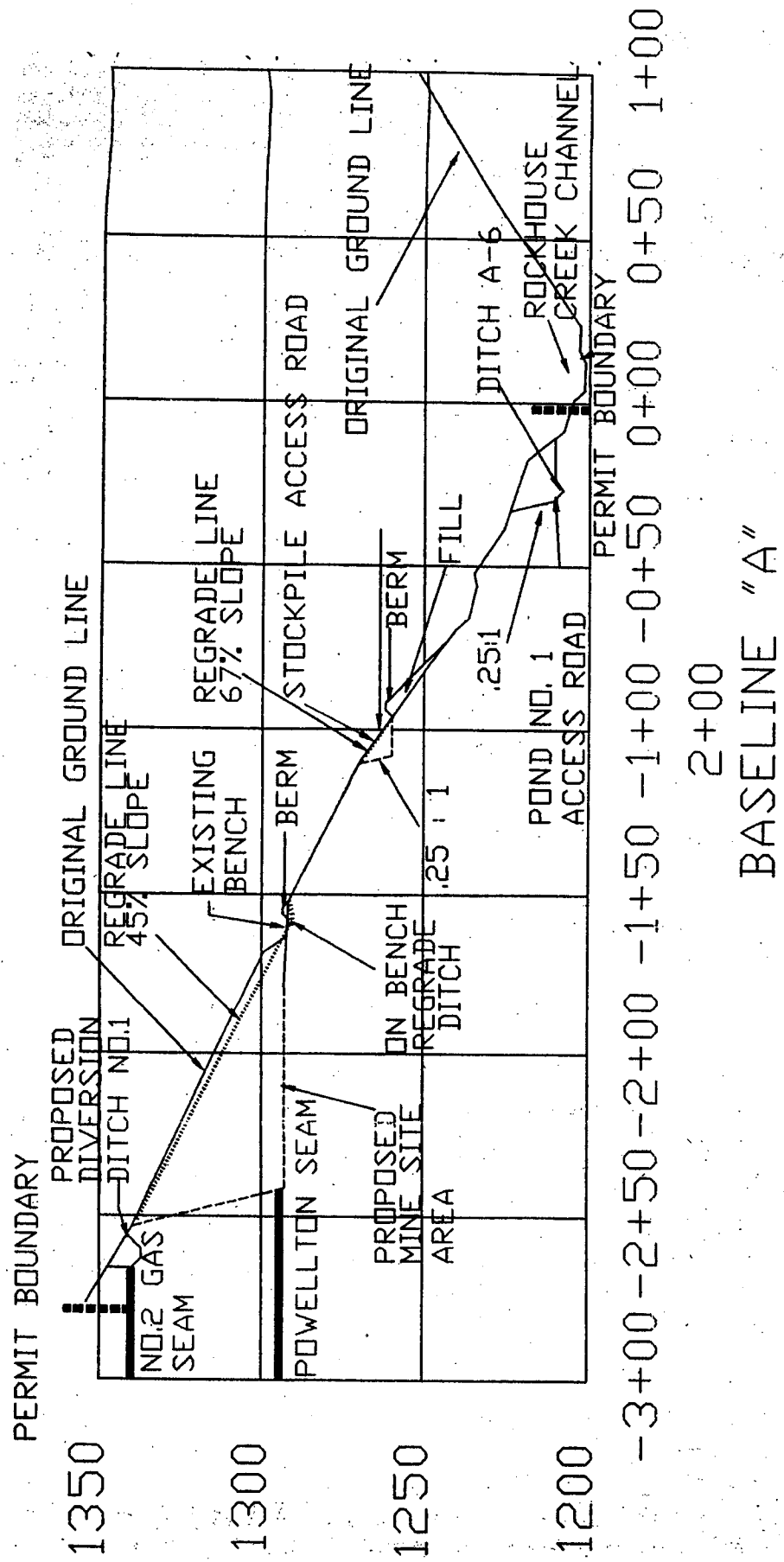
SCALE: 1" = 2000'

OCTOBER, 2004



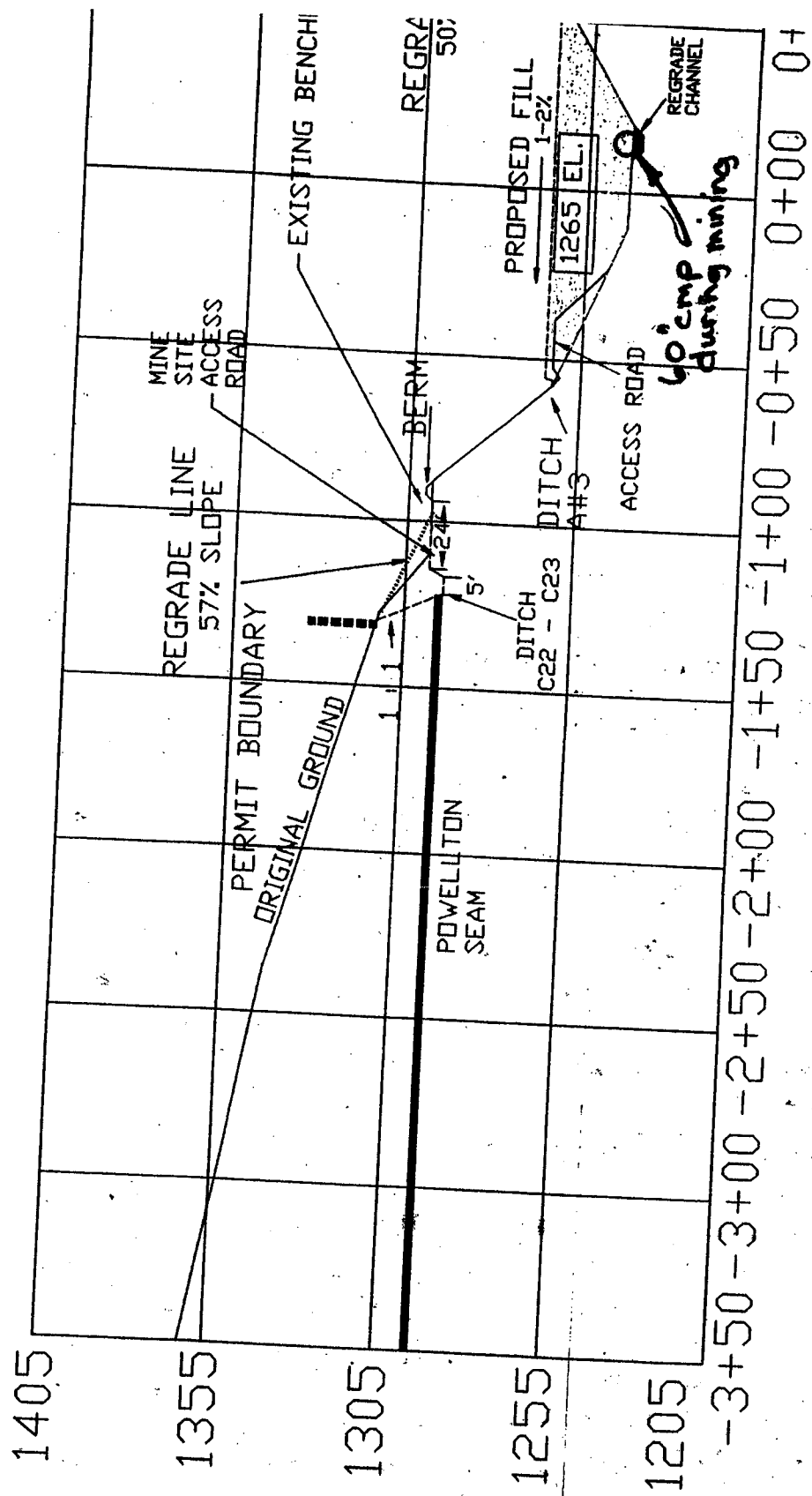
Drawing 3 of 12

1" = 100'

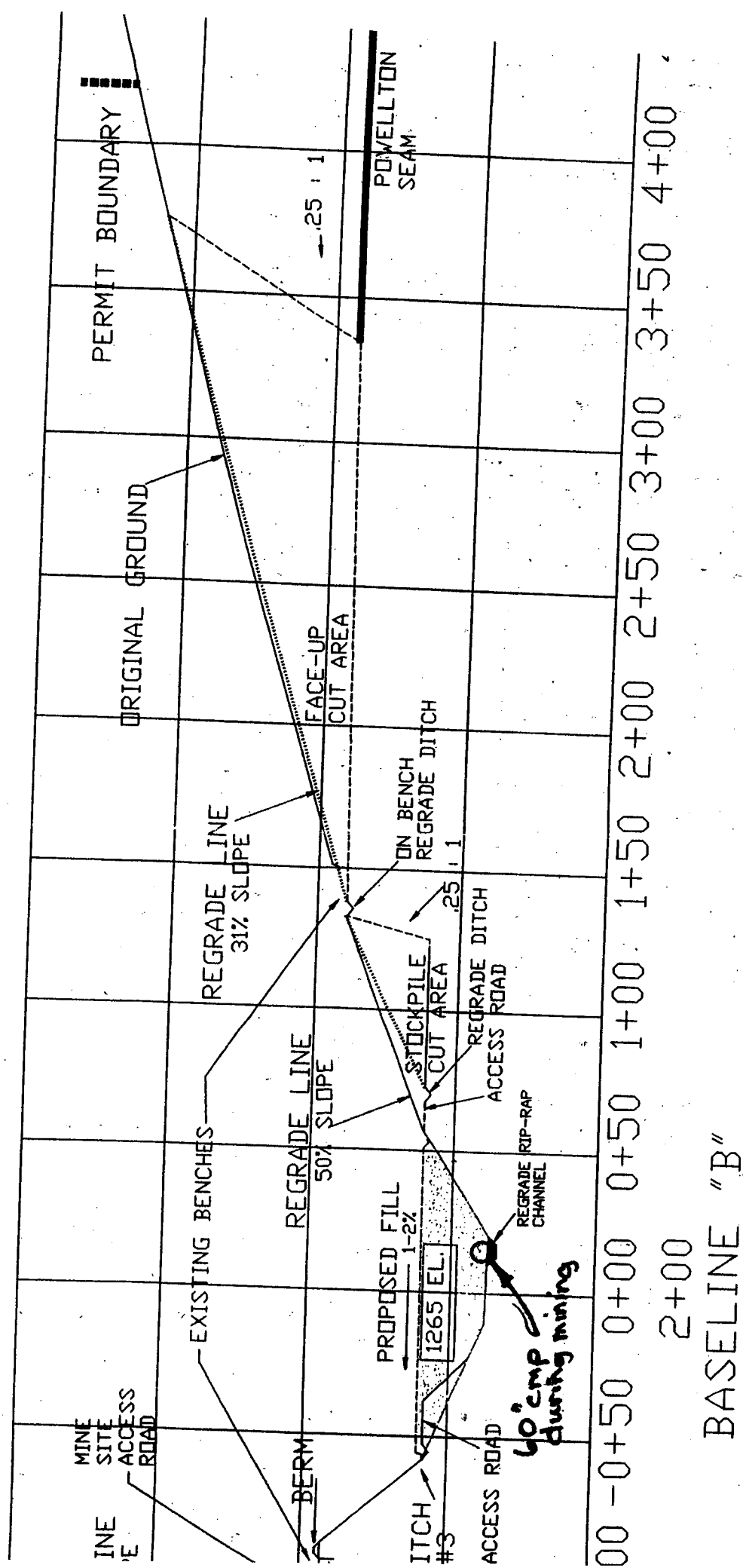


Drawing 4 of 12

1" = 50'

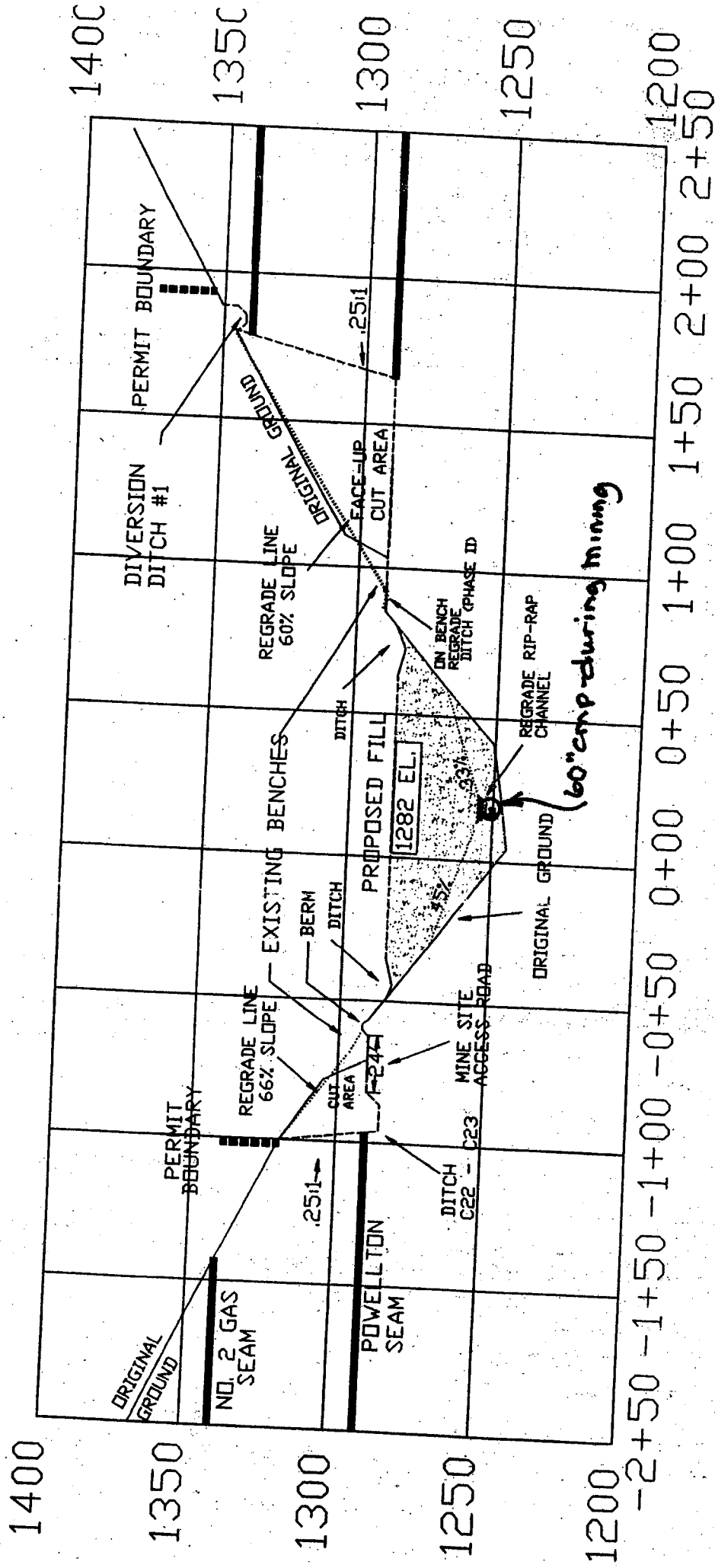


2+00
BASELINE "E"

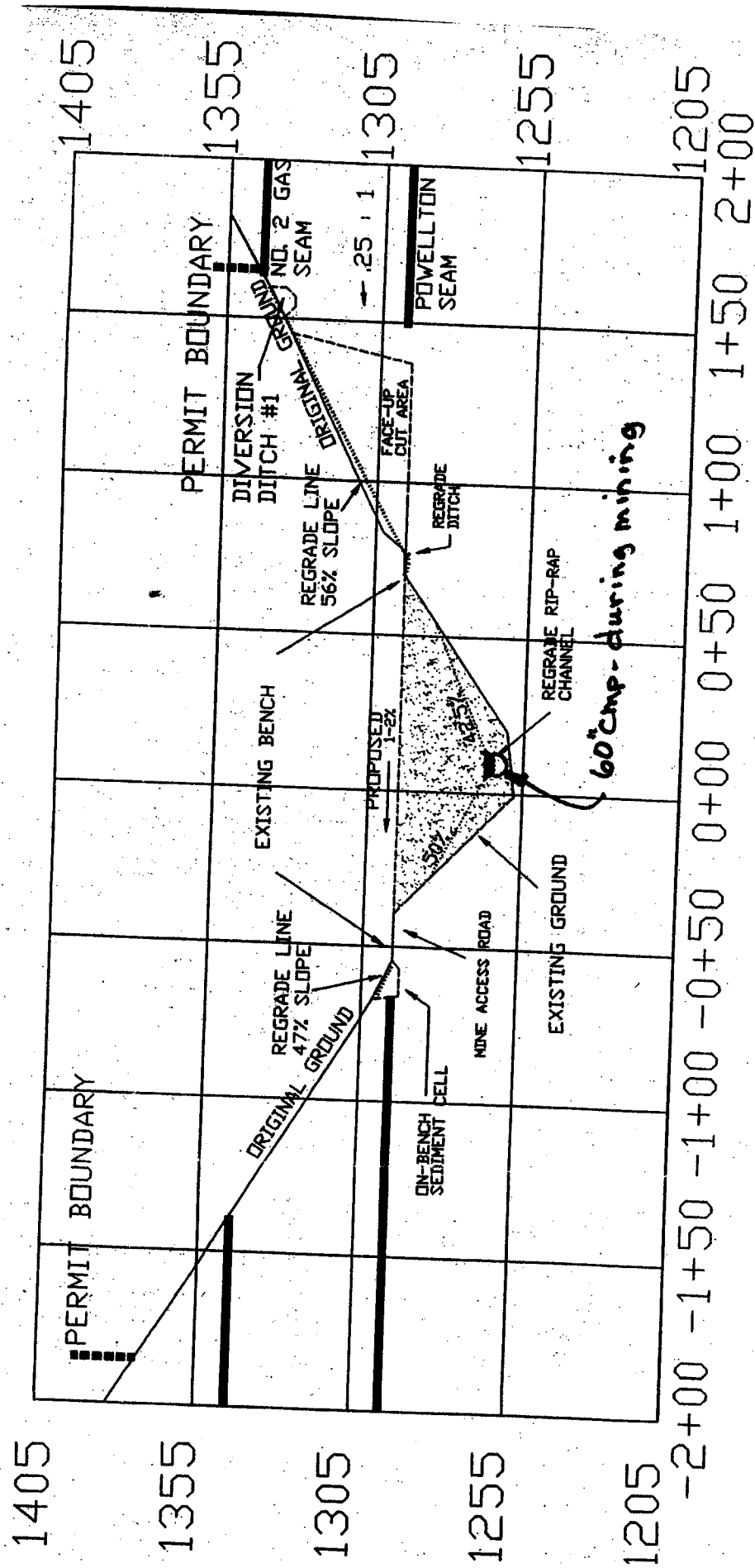


Drawing 6 of 12

Sh 2 of 2



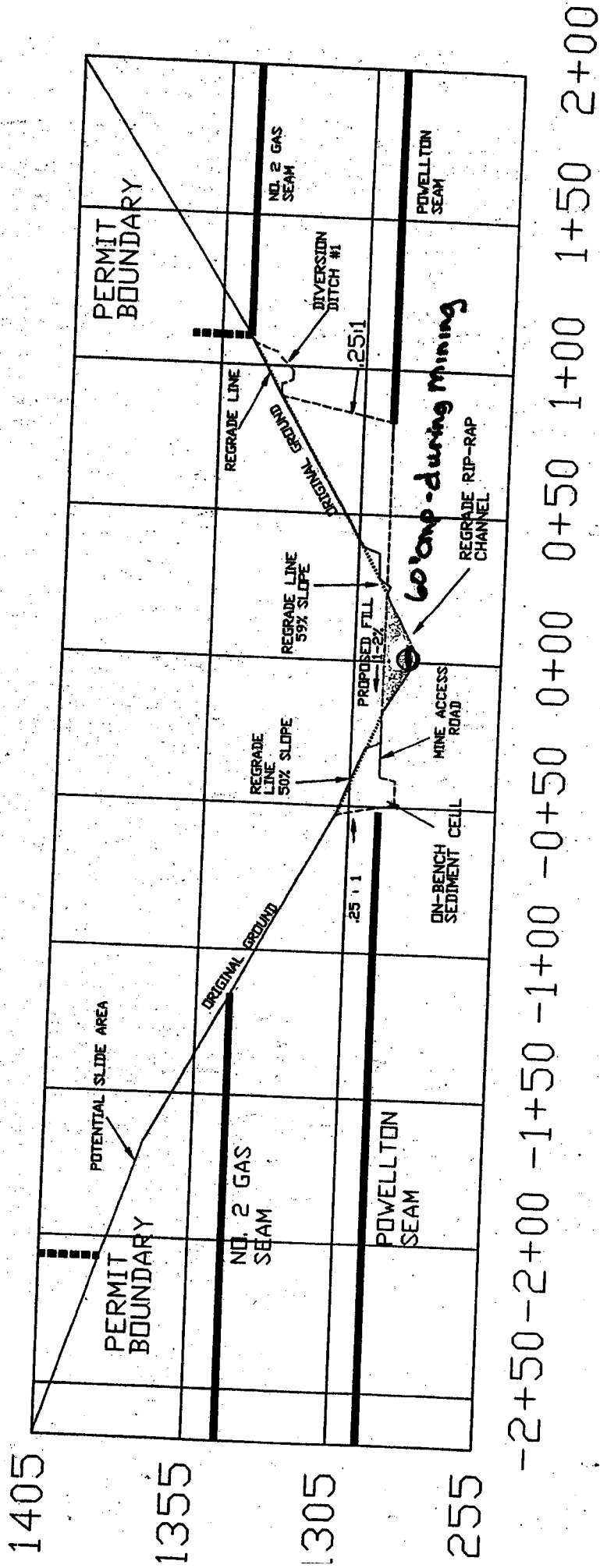
3+25
BASELINE "B"



4+00
BASELINE "B"

Drawing 8 of 12

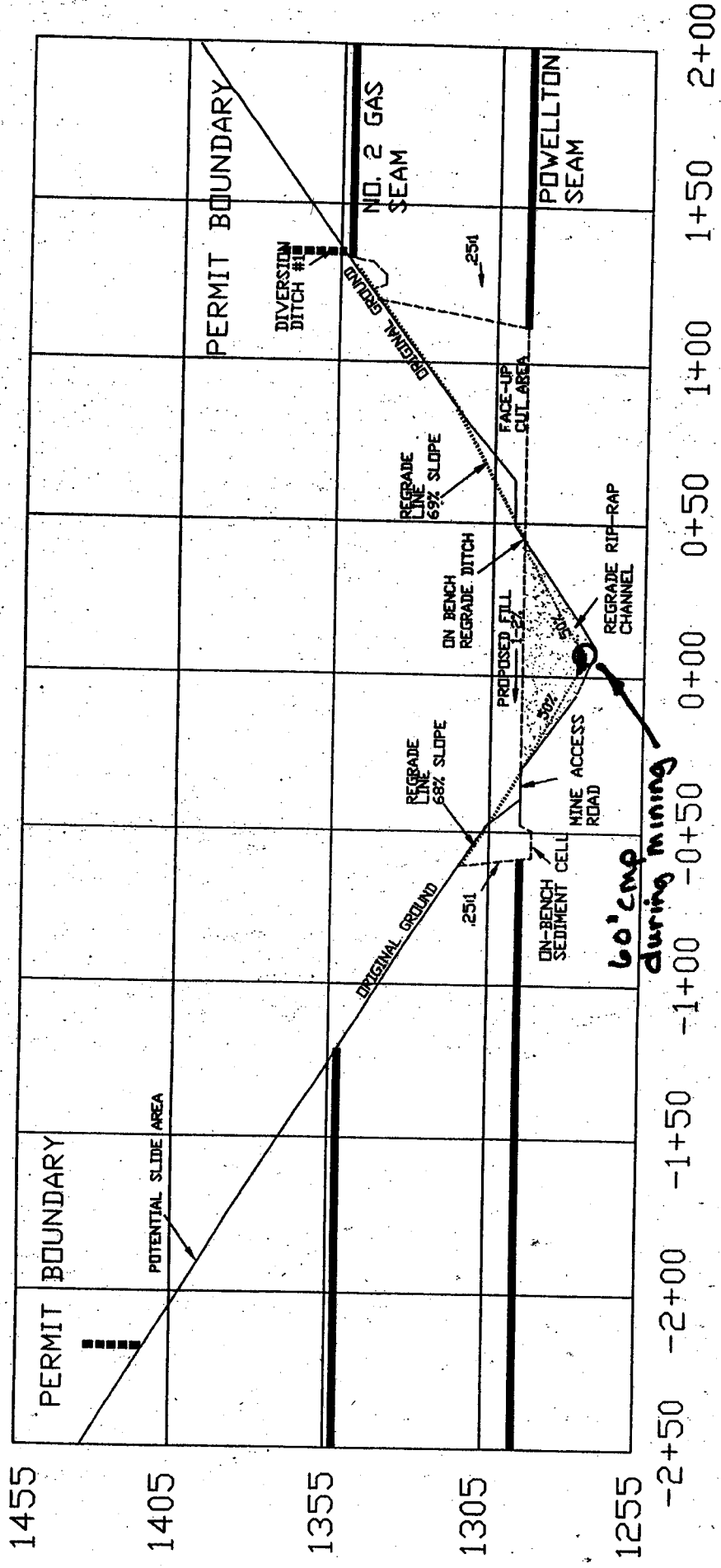
1" = 50'



6+00
BASELINE "B"

Drawing 9 of 12

1" = 50'



5+00
BASELINE "B"

Drawing 10 of 12

1" = 50'

200400578

WHITE BISHOP MINE - PHASE I

ELK RUN COAL COMPANY, INC.

P. O. Box 497

SYLVESTER, WV 25193

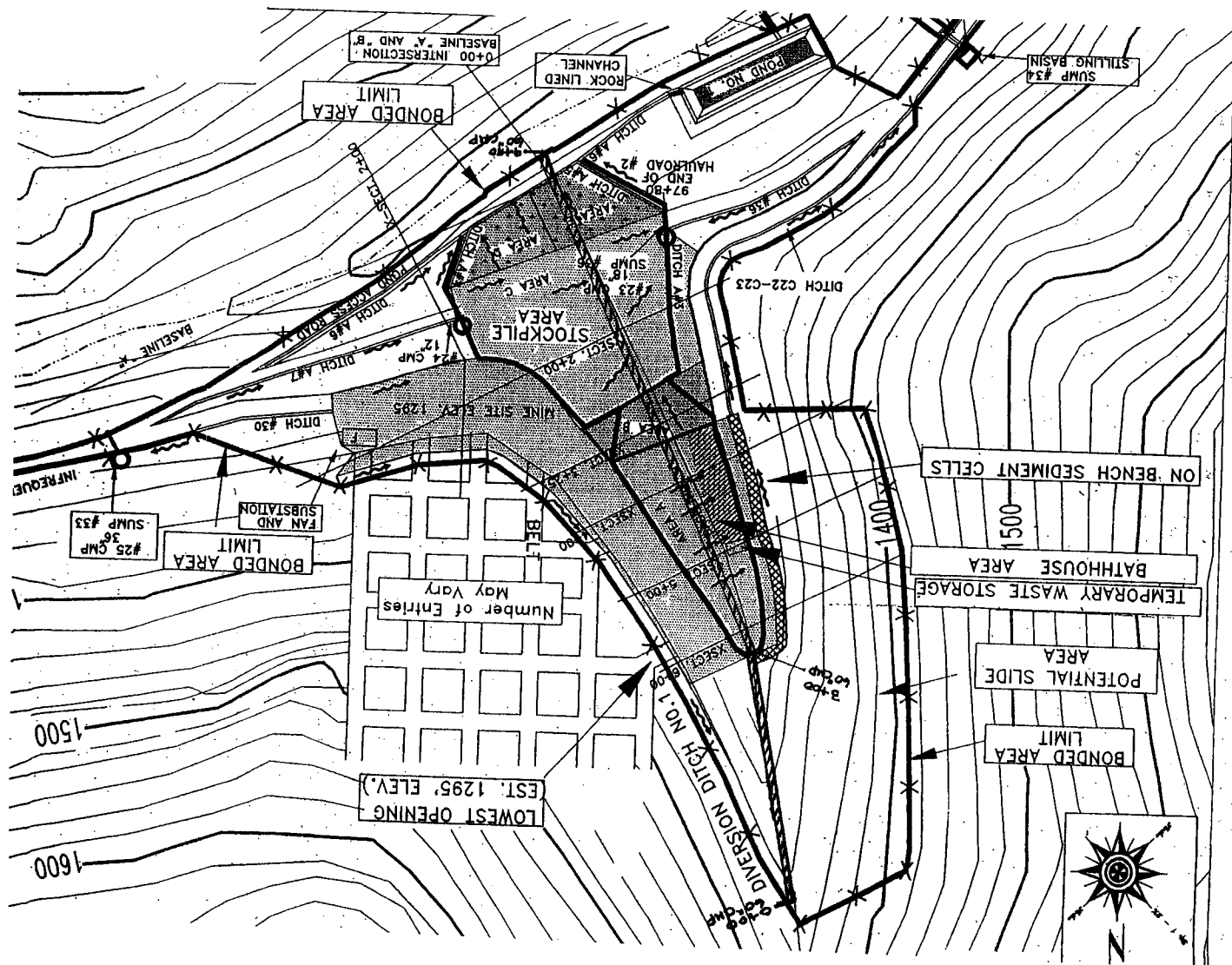
CLEAR FORK DISTRICT / RALEIGH COUNTY

SCALE: 1" = 200'

DECEMBER, 2005

Prepared by
The Mining Consulting Company LLC
Beckley, WV

TMCC



200400578

WHITE BISHOP MINE - PHASE II

ELK RUN COAL COMPANY, INC.

P. O. Box 497
SYLVESTER, WV 25193

CLEAR FORK DISTRICT / RALEIGH COUNTY

SCALE: 1" = 200'

DECEMBER, 2005

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Beckley, WV

TMCC

